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# CONSIDERATIONS

ON VARIOUS

## GRIEVANCES

IN THE

PRACTICK PART

OF OUR

L A W S.

WITH SOME

OBSERVATIONS

ON

THE CODE FREDERICK,

THE ROMAN LAW,

AND

OUR OWN COURTS OF EQUITY.

Humbly submitted to the candid Examination of  
all Persons who have the Peace and Property  
of the SUBJECT truly at Heart.

D U B L I N :

Printed in the YEAR MDCCLVI.

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CONSIDERATIONS

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THE COFF FREDERICK

THE ROMAN LAW

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OUR OWN COURTES OF POLITY

DUPLICATE

Printed in the Year MDCCLVI.

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## CONSIDERATIONS, &c.

**E**QUITY, good Sense, and Acuteness may be found in all Countries; but the more the Faculties of the Soul are employed, the more refined and extensive they will be. In Nations thoroughly civilized, where Arts, Sciences, and Commerce flourish, there human Prudence will be found most perfect; for the Improvements in all Things will be in Proportion to to our Exertions about them. The Roman Law, reduced into order by *Justinian*, is a Work that must remain an eternal Monument of that great Emperor's Regard to the Welfare of Mankind. His Institutes contain the Elements of almost all civil Justice; and as it probably may be a Satisfaction to such Persons as have not dipped into the History of the Roman Law, (especially as there is a great Connection between that and Part of our Law) to have a short View of it set before them, I shall before I proceed to the main Design of the following Sheets (which is to lay a few Hints before the Publick for the remedying some Grievances in the Practick Part of our Law) take Leave to present the

Reader with a summary Account of the Roman Law, extracted from a very judicious French Writer *Joseph de Ferriere*

The Roman Law derived from Greece.

The Roman Law, says this Writer, seems originally to be derived from the polite Nation of *Greece*; for in the Year of *Rome* 299, Embassadors were sent into that Country, to bring such Laws from thence as the Wisdom of that learned People had from Time to Time established; and accordingly in the Year of *Rome* 302, the *Decemviri* were created, and they being vested with great Powers, a System of Laws partly of those brought from *Greece*, and partly of the Regal Laws and Customs of their own Country, was approved of by those Magistrates, and by a *Senatus Consultum*, confirmed by a *Plebiscitum*, ordered to be every where obeyed. These were Engraven on Ten Tables of Brass, to which two Tables more were afterwards added, and the whole went by the Name of the *Law of the Twelve Tables*.

The Law of the Twelve Tables.

But as the Defects and Inconveniencies of Laws are seldom discovered 'till they come to be put in Execution; so it happened with the Laws of the Twelve Tables — for their conciseness rendered them obscure and uncertain, — which made the Interpretation of Lawyers necessary; besides, Equity being the Foundation of all Laws, it frequently happens, that though a Law in general may be just; yet in private Cases it may prove quite otherwise; and

Equity the foundation of all Laws.



and therefore it is necessary the Law should be mitigated by Equity.\*

This Interpretation of the Lawyers created a new kind of Law, which was called the *Civil Law* or Usage of the Bar. The Credit of these Interpreters was so much the greater, as they were Men of Rank and Fortune, whose Wealth joined to their profound Learning in the Laws, very much contributed to advance the Dignity of their Profession as much as their personal Merit.

A new kind of Law created by the Interpretation of Lawyers.

In making their Interpretations, they followed two Rules; first, To adhere to the Design of the Law, rather than the Words; secondly, When the Law mention'd only certain Cases, they extended it to others by Parity of Reason.

However, when the Law is absolutely unjust in its Principle, so that it can receive no Interpretation, without rendering it utterly useless, there is no other Remedy but to have Recourse to the Sovereign Authority, which alone has the Power of giving Relief by making another to repeal it.

The Interpretation of the Laws belonged to the Magistrates, as well as the Lawyers, particularly to the *Prætors*: for Part of the

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Consular

• For Example. It is in general a just Maxim in Society, that private Convenience should always give Way to the publick Utility;—and yet it would be the height of Cruelty to ruin a private Family for the Sake of the Publick; and therefore in such a Case Equity calls upon the Publick, to make the Party a Compensation for giving up his Property for the Service of the whole Community.

Prætors.

Consular Power, was the Administration of Justice, and consequently the Interpretation of the Laws. But as the Consuls were often called out to the Wars, it was necessary to create a Magistrate to supply the Place of the Consul in the Administration of Justice; and he was called *Prætor*. Afterwards by the increase of the Empire, the Number of *Prætors* were augmented: and at last, they came to be twelve. And as the Laws did not take in all Cases, nor were always equitable, the People tacitly allowed the *Prætors* to propose their Edicts for mitigating the Rigour of the Laws and adding their Decisions where the Law was not explicit.

Their Edicts.

However, in Process of Time, it so happen'd, that many of the Edicts of the *Prætors* were contrary to Equity and the most received Maxims, having been made by Caprice or Partiality. Wherefore in the Year of Rome 686, the *Plebiscitum Cornelianum* obliged them to specify the Method they intended to observe in administering Justice through the whole Course of their Magistracy, from which they could not deviate,

Many of the Edicts made after this *Plebiscitum* were so very just, that they have been perpetuated as Laws, from which there is no departing, without an Offence to Equity and right Reason: However, the vast Number of them diffused a great Uncertainty through the whole Law: To remedy which, the Emperor *Adrian* ordered *Julian* a celebrated Lawyer, out of all these Edicts to form  
a per-

a perpetual one, which might serve the *Præ-*  
*tors* for a constant Rule, to guide them in A perpetual  
 their Judgments and Administration of Jus- Edict.  
 tice, and at the same Time took from them  
 the Power of making Edicts for the future.

This perpetual Edict was divided into 52  
 Books, containing the most just and useful  
 Matters of all the *Prætors* Edicts, and several  
 Roman Lawyers have made Commentaries  
 thereon.

The Roman Republick was utterly extin-  
 guished under *Augustus*: for in the Year 731, A new kin  
 the *Law-Regia* translated the Sovereignty of Law calle  
 from the People to his Person, which produced Constitution  
 a new kind of Law called the *Edicts and Con-* of the Empe  
*stitutions of the Emperors*: However, the Po- rors.  
 lity of *Augustus*, the better to strengthen his  
 Government made him keep up the Form of  
 General Assemblies, in which he ordered all  
 his Edicts to be published. But *Tiberius* sup-  
 pressed even this faint Mark of antient Liber-  
 ty, and sent his Edicts to the Senate only,  
 who never failed to Decree according to his  
 pleasure: however in after Ages the Empe-  
 rors frequently published their Edicts with-  
 out this Form, most of which they com-  
 manded should go under the Title of *Imperial*  
*Constitutions*, in order to give the greater Lus-  
 tre to their Sovereignty.

As soon as there were any Laws established  
 at *Rome*, Care was taken to collect and re-  
 duce them to Order.

After the Law of the twelve Tables, the  
 Lawyers composed certain Forms for regula-  
 ting



ting the Proceedings of the Court. In *Julius Cæsar's* Time *Ofilius* the Lawyer undertook a Compilation of the *Prætors* Edicts, which afterwards at the Command of the Emperor *Adrian*, were made into a perpetual one, by *Julianus*.

The Constitutions of the Pagan Emperors collected in from *Adrian* to *Dioclesian* were, in the Reign of *Constantine* the Great, collected by *Gregorius* and *Hermogenius*, two excellent Lawyers. *Theodosius* the younger after this, ordered a Collection to be made of the Constitutions of the Christian Emperors, from *Constantine* to his own Time. He made also another Code divided into seventeen Books, called the *Theodosian Code*. This was published in the Year of Christ 430.

This last Code was followed, 'till it was suppressed by *Justinian's* Order.

Notwithstanding these several Codes, there was no authentick Collection, before *Justinian's*, of the Answers and other Writings of the Lawyers, which lay scattered in about two thousand Volumes; and the Contradictions in them were alone sufficient to render the Reading of them utterly useless.

To remedy these Inconveniencies, *Justinian* undertook to make a general Compilation of the most useful Constitutions of the Emperors his Predecessors and all his own to that Time. He also formed a Project of collecting the best of the Writings of the Lawyers, and by that Means, making a compleat Body of Civil Law, to which Recourse might be had



had, without consulting all those other Volumes, which had introduced so much Confusion.

The first of these, viz. the most useful Constitutions, called the *Justinian Code*, <sup>Justinian's Code.</sup> soon came out. And by an Ordinance, *Justinian* gave every Thing therein, the Authority of Law, and thereby repealed all other Constitutions. This was done in the Year of Christ 529.

*Justinian's* next Care was, to make a compleat Collection of the *Roman Law*, and for that Purpose he made an Ordinance, directed to *Tribonian* in the Year 530, empowering him to chuse a certain Number out of the most eminent Lawyers, who were to make a Collection of the best Decisions of the antient Lawyers, and to reduce them into fifty Books, in such a Method, as there should be no Contrariety or Confusion therein. And he orders that the Volume so composed, should be called *Digestorum vel Pandectarum Volumen*; which were the Names <sup>The Pandects or Digest.</sup> given by many of the antient Lawyers to their Works.

Then he forbids all Lawyers making any Commentaries upon that Volume, lest the same Confusion should be introduced by the contradictory Observations of the Lawyers. And lastly, he orders, that every Word should be wrote at full length, and no Notes or Abbreviations made use of, which had caused so much Obscurity and so many Doubts,

Doubts, in the Writings of the antient Lawyers.

In pursuance of this Ordinance, *Tribonian* made choice of sixteen Lawyers; and the Labours of these great Men were crowned with Success; for in a short Time they finished the Work, which was not begun 'till 530, and was finished 16 December 533. So that it was but three Years in making, at the End of which it was published under the Emperor's Name and Authority. It was called the *Digest*, that is to say, a Methodical Compilation; and it had the Name of *Pandects*, as containing Decisions upon most of the Questions that can arise in the Law, as  $\Pi\alpha\tau$  in Greek is *omne*, and  $\Theta\epsilon\gamma\gamma\mu\alpha\iota$  *completor*; so that *Pandecta* signifies a comprehensive Collection.

The Style of this Work is the finest that can be imagined, elegant and concise: And it may be said with good Reason, that, of all the Works produced by the Wit of Man, none can enter into Comparison with this.

The Truth is, that before the Publication of the *Digest*, the *Roman* Law was like a great Sea, without any Port of Safety: It was dispersed into many Volumes, and contained so many contradictory Decisions, that all the Use they were of, was to occasion Doubts and keep Men in Suspence. The Edition of the *Pandects* most to be depended on, is the *Florentine*, which is a Copy from the Original, and which the *Pisans* had first:

And ke

And it afterwards fell into the Hands of the *Florentines*, where it now is.

While the *Digest* was composing, the Emperor commanded *Tribonian*, and two others, to make an Abridgement of the first Principles or Elements of the *Roman Law*, for the Benefit of young Students: And this Work under the Title of *Institutes*, came out a Month before the *Digest*. Justinian's  
Institutes.

They had the Force of Law given them, by the same Emperor's Constitutions. And this Work is a Masterpiece.

Afterwards, in the Year 534, the same Emperor published another Code, and suppressed that which was put out in 529, there being many useless Laws in the first, others contrary to the present Usage, and several new Ordinances which it was proper to insert in this Volume. And by an Ordinance he directed, that this his last Code should have the Force of Law; and the other be entirely rejected: In short, this last Code revised, corrected and amended the other.

During *Justinian's* Life, the Body of the Civil Law consisted only of three Parts; The *Institutes*, *Digest* and *Code*: But after his Death, the fourth Part was composed out of his Constitutions, called *Novels*; so that this Emperor's Novels are his last Constitutions, which are quite consistent with the *Digest* and *Code*: and in no Sort introductory of any new Law. His Novels.

The Body of Law composed by *Justinian*, kept its Ground in the East for 300 Years after



Basilisks.

after his Death; but afterwards, the Baseness and Jealousy of the Emperors, and their Envy of *Justinian's* Fame, made them endeavour to destroy it, by introducing new Ordinances, contrary to the *Roman Law*; which were called *Basilisks*, which continued 'till the Reign of *Constantine XIII.* the last of the *Greek* Emperors; in whose Time *Constantinople* was taken by *Mahomet*, the Emperor of the *Turks*: which put an End both to the Eastern Empire and its Laws.

The Body of *Justinian's* Law has been however received with great Applause by all *Europe*, and is look'd upon as the Rule of all good Laws and Fountain of the true Principles of that Science.

As to the Study of the *Roman Law*, it ought to be preceded by a perfect Knowledge of all Kind of polite Learning, especially the *Roman History*, as taken from the purest *Roman* Authors.

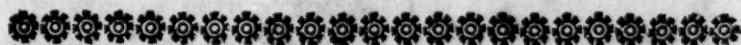
It may therefore be concluded, that such as have reaped no other Benefit from their Studies, than the Dust of the Schools, are in no Capacity to undertake the Study of the *Roman Law*. And to this Knowledge of polite Learning, must be added a sound Judgment, good Memory, and Clearness of Expression. And though much Pains will be necessary, the Advantages that accrue, will be more than a sufficient Recompence; as the End of Study is to improve our Understanding and refine our Reason.

I shall





I shall now present the Reader with  
another Extract from DUCK's Trea-  
tise of the Use and Authority of  
the Civil Law in *England*, which I  
have made with as much Brevity  
and Clearness as I was able.



I shall now present the Reader with  
another Extract from Duck's Treatise  
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## CONSIDERATIONS, &amp;c.

**T**HERE is no Historical Account either of the Laws or Government of the Britons before the Entry of *Julius Cæsar*, except what we find in the Roman Authors. *Cæsar* relates that in *Britain* and *Gaul*, the Druids were both Priests and Judges, and decided all Kinds of publick and private Controversies: And such as refused to stand to their Award, were forbid to appear at their Sacrifices: But of their Laws and holy Ceremonies there is no Account extant; not being permitted to commit any Thing to Writing. But *Cæsar* made no Alteration in the Laws of *Britain*: He only required Hostages and a Tribute from their Kings: And *Seneca* says, *Britain*, before *Claudius's* Reign was *Sui Juris*. But *Claudius* subduing Part of the Island introduced the Roman Laws, and by his Edict silenced the Druids. And *Tacitus* writes, that *Claudius* planted a Colony at *Doncaster*, to keep the Rebels in Awe, and teach his Allies the Study of the Roman Law.

No Account of the Laws or Government of *Britain* before the Entry of *Julius Cæsar*. The Druids both Priests and Judges.

*Cæsar* did not alter the Laws of *Britain*.

*Claudius* introduced the Roman Law.

But

Britain reduced into a Province and was governed by the Roman Laws.

But *Britain* being entirely subdued by *Agricola*, was reduced into the Form of a Province by *Vespasian* and *Domitian*, who, as well as their Successors, governed it by the *Roman* Laws and by *Roman* Magistrates, the *British* Laws being entirely abrogated.

The *Britons* not only conformed to the *Roman* Laws, but affected their Manners, Language, Dress and Eloquence; so that whatever our Ancestors boast of, either of Beauty or Splendour, was all owing to the Government of the *Romans*: Nor did the *Britons* forsake the *Roman* Laws, 'till they themselves were deserted by the *Romans*; which happened in the Time of *Honorius*, who renounced the Sovereignty of *Britain* in the Year 410. And the *Romans* took their last Farewell of the Island in 426 or 427. An Account of which may be seen in *Bede*, L. I. C. 12.

*Honorius* renounced the Sovereignty of *Britain*.

The *Saxon* and *Danish* Governments.

It has been advanced by some celebrated *English* Lawyers, that the *Romans* never imposed their Laws on the *Britons*. But both *Cambden* and *Selden* prove the contrary, by most evident Testimonies: To whom may be added *Spelman*. Indeed when they were forsaken by the *Romans*, they were obliged to stoop to the *Saxon* and *Danish* Governments; and of Course to their Laws, which they were intent in propagating, the more easily to keep the *Britons* in Subjection: However, the best of their Princes often imitated the *Romans* in administering Justice. Thus *Bede* tells us *Ethelbert*, King of *Kent*, made



made Decrees, to be observed in Judgments between his Subjects, according to the *Roman* Model: However, few of the *Saxon* Kings paid any Regard to the *Roman* Laws: And the *Danes* being Heathens, and invading *England* in the Year 800, destroyed not only Cities, &c. but Laws, Sciences, and all Kind of Learning. Their Barba-  
rity. |

Much Light therefore cannot be expected, concerning the *Roman* Laws, in those Ages when *Justinian's* Books lay buried: The *Danes* destroyed every Thing, and those few *Roman* Remains, which are to be seen in the Time of the *Saxons*, were taken from the *Theodosian* Code, and Fragments of *Ulpian*, &c.

The *Danes* being expelled, *Edward* the Confessor formed one Common Law, out of those of the *English*, *Danes*, and *Mercians*: But *William* the Conqueror, and some of the first Kings after him, abrogated many of *Edward's* Laws, and laid the Foundation of the Government under our present Kings; and introduced the Use of the Civil Law, in several Cases amongst us. And tho' there is some mention of Chancellors in the *Saxon* Times; yet it is certain, the Court of Chancery was instituted under the Conqueror, and had Power, in the same Manner as the *Prætor* aided and supplied the *Roman* Law, to moderate the Rigour of our Laws, and to grant Relief in Cases of Fraud. And in his Reign the Court of *King's-Bench* was erected; Edward the  
Confessor  
forms one  
Common  
Law.  
  
William the  
Conqueror  
laid the  
Foundation  
of our present  
Government.  
  
Institutes the  
Court of  
Chancery.  
  
Likewise the  
Courts of  
King's Bench

Common  
Pleas, and  
Exchequer.  
Appoints the  
Terms.  
And settled  
the Tryal of  
Facts by Ju-  
ries.

ed; and likewise the Court of *Common-Pleas*||, and also the Court of *Exchequer*. He likewise appointed the Terms, and that all Facts were to be determined by Twelve sworn Men: And though there is of this some faint Appearance under the *Saxon Government*; yet it was by him reduced to a Method\*.

Distinguished  
the Ecclesiastical  
Courts  
from the Law  
Courts.

He also distinguished the Ecclesiastical from the Law Courts: However, during the Reigns of the Conqueror and his Son *William Rufus*, the Civil Law was not heard of in *England*; for the Pandects were not restored by the Emperor *Lotharius* until the Year 1128, which was the Twenty-eighth Year of our *Henry Ist.* But in 1149, the Fourteenth of King *Stephen*, *Vacarius* taught the Civil Law in *England*, as appears from the *Norman History*, written by *Querectanus*. And this *Vacarius* was in such Repute, that he was elected Arch Bishop of *Canterbury*, which he refused and died in the Monastery of *Beck* in *Normandy*, in 1180.

The Civil  
Law taught  
in *England*.

In the same Reign, *Theobald*, Archbishop of *Canterbury*, sent *Thomas Becket* to *Bologna* in *Italy*, to study the Civil Law: And upon his

|| *Gwin* saith in his Preface to his Reading, that upon the granting the Great Charter by *Henry* the Third, the *Common-Pleas* was erected and settled in one certain Place.

\* Itinerant Justices were instituted by *Henry II*, and the Kingdom of *England* divided into Six Circuits. *Hale's History of the Common Law*, 139. 143. Afterwards, the 25th of the same King, the Limits of the itinerant Justices were divided into Four Circuits.

his return was made Doctor of Laws at *Oxford*; and three Years after King *Stephen's* Death was made Chancellor of *England* by *Henry II.*

The Civil Law has ever since that Time, Professors of the Civil Law established. flourished in *England*, and since the Reign of *Henry VIII.* our Kings have allowed an annual Salary for the Maintenance of Professors of the Civil Law: who before were supported by Contributions from their Audience: Besides which, many Fellowships are appropriated for the Maintenance of Students in the Civil Law.

The first Writers on the *English* Law, The first Writers on the English Law well versed in the Civil Law. such as *Glanville*, Chief Justice under *Henry III.*, *Bracton*, Chief Justice under *Henry III.*, *Briton*, Chief Justice, *Thompton*, Chief Justice under *Edward I.* were well versed in the Civil Law, from whence they borrowed a great deal to explain and illustrate the Law of *England*. *Bracton* was Professor of Civil Law at *Oxford*, and *Briton* Doctor of Laws.

The Court of Chancery does not proceed by the meer Law of *England*; but according to Equity of Conscience: In which Court there are many Things, that agree with the Civil Law. Most of the Chancellors since *Thomas Becket's* Time, were Bishops or Chancellors generally Bishops or Clerks until the Reign of Henry VIII. Clerks, and learned in the Civil Law, until the Reign of *Henry VIII.*, when Lord *Rich.* the first Common Lawyer, was by him made Chancellor. The Masters in this Court were also generally Doctors of the Civil Law. And from the Book of Original Writs, resembling



the Book of Actions, published for the Benefit of the *Roman* People by *Cneius Flavius*, and which is written with great Brevity and Accuracy, it appears the Persons who writ them were well skilled in the *Roman* Laws.

The Marshal's Court, the Admiralty, and the Ecclesiastical Courts proceed by the Civil Law.

The Courts in which, by the Custom of *England*, they proceed by the Civil Law, are, 1<sup>st</sup>, the Courts of *Chivalry*, under the Marshal of *England*; the Court of *Admiralty*; and the *Ecclesiastical* Courts.

The Court of *Admiralty* has Cognizance of all Crimes done upon the Sea, the Sea being without the Dominion of the Common Law; and is governed by the Civil Law: However it was enacted under *Henry VIII.* that the Civil Law should be so far laid aside, that, in Criminal Cases, Matters of Fact should be determined by a Jury of 12 Men.

The Ecclesiastical Courts likewise governed by the Canon Law.

The *Ecclesiastical* Courts are governed by the Civil and Canon Law, together with the Provincial Constitutions of *Canterbury*, and those of the Pope's Bulls sent hither to our Kings. But after *Henry VIII.* had thrown off the Pope's Supremacy, the old Canon Law was confirmed by Statute, excepting such Articles as were repugnant to Holy Writ, the King's Prerogative, and the Law, Customs and Statutes of *England*.

After the Pope's Supremacy was abjured, the Doctors of Law were allowed to exercise Ecclesiastical Jurisdiction; though not in Orders or married; which is contrary to the Canon Law.





## *Of the* FEUDAL LAW.

**P**AULUS MINUTIUS has observed in his Book *de Senatu Romano*, that the Feudal Law seems to be derived from the *Roman* Custom of Patrons and Clients, that was practiced even in the Infancy of *Rome*; and indeed from the Words of the *Roman* Law, which are very remarkable, the Conjecture is not at all improbable, as by them it appears, that Patrons and Clients, were in a great Measure like our Lords and Tenants.



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THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

LONDON

Printed by J. Sturges, at the

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1704

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## CONSIDERATIONS, &c.

**T**HE three great Ends of entering in-  
 to a social State, are, the Preserva-  
 tion of the Properties, the Liberties  
 and the Lives of the People; and the Laws  
 best contrived to answer these Purposes, may  
 indubitably be deemed the most salutary.

The 3 great  
 Ends of Soci-  
 ety.

That the Laws of *England* are schemed,  
 nay calculated, to secure all those important  
 Blessings to us, may be easily proved; I  
 mean, while the true Spirit of our Laws is  
 adhered to; however, as there is nothing  
 of mortal Contrivance that has not Defects  
 in it, it may be asserted, that whatever De-  
 fects there may be in our Laws, none but  
 corrupt Men will seek to avail themselves of  
 them; and therefore since Human Nature  
 is not to be depended on, for the Support of  
 even good Laws, and that many Men will be  
 wicked and base, if they can find the least  
 Room to be so with Impunity; the oftener  
 our Laws are reviewed, corrected and amend-  
 ed, most certainly the better.

Laws should  
 be often re-  
 viewed and a-  
 mended.

The *British* Constitution is like a stately  
 Palace, contrived with infinite Skill and Ex-  
 pence,

pence, to answer the Convenience and Comfort, as well as the Magnificence of the Owner ; but like all other great Fabricks must be kept in constant Repair, or it will soon moulder ; the most skilful Architects should be employed from Time to Time to examine every Part of it, to see there are no Leaks, that every Thing is staunch and in good Order, and to consider what Additions may be necessary in order to compleat and perfect the Work.

Men in general will be bad if the Laws do not make them good.

That the Generality of Men will be bad, if the Laws do not make them good, I fear, will be found too true a Proposition ; therefore Laws, however morally framed, that can be easily evaded, may justly be looked upon as having radical Defects in them.

Chicanery of Practices.

This granted, I shall consider in the first Place some Defects in our Law, with Regard to the Chicanery of evil minded Men, who sometimes have the carrying on of Suits ; and altho' this is an Evil that I hope does not frequently occur, it is a Reproach to the Profession, as well as an Injury to the Subject, that it should ever happen.

How the Law stands with Regard to them.

And here it may not be improper to observe how the Law stands by the Stat. of *West* 1st. c. 29, by which, Pleaders are enjoined to put no Deceit on the King's Court, nor secretly to consent to any such Tricks as may abuse or beguile the Court or the Party, be it in Causes, Civil or Criminal ; and it is ordained that if any of them be convicted of such Practices, he shall be

im-



imprisoned for a Year, and never be heard to plead again in any Court. And *The Mirror of Justices*, C. 2d. Sect. 4, says, That every Serjeant Pleader shall not defend any Wrong or Falshood to his Knowledge, but shall leave his Client, when he shall proffer any false Testimony, or Consent to any Lyes, Deceits or Corruptions whatsoever in his Pleadings.

And the Laws against the black and infamous Crimes of Barretry, Champerty and Maintenance, fully prove that our Ancestors had it in their Contemplation effectually to secure the Peace and Property of the Subject.

But for the better understanding what those Crimes are, it will be necessary to speak particularly of each of them.

A Barrettor, according to Lord *Coke*, is a Barrettry. Common Mover and Maintainer of Suits, in Disturbance of the Peace, and in taking and detaining the Possession of Houses and Lands, or Goods, by false Inventions ; and the Indictment runs, that he is *Communis Malefactor ; calumniator et Seminator litium et discordiarum inter vicinos suos, et pacis Regis perturbator* ; and it is with Justice said, that he is the most dangerous Oppressor in the Law ; for he oppresseth the innocent by Colour of Law, which was made to protect him from Oppression. A Barrister at Law entertaining a Person in his House, and bringing several Actions in his Name where nothing was due, was found guilty of Barretry ; and for the Prevention of this Crime, the  
Law

Law will not suffer any Thing not actually recovered to be granted over, to prevent defective Titles being granted to Lawyers, or other Men of Substance, to oppress those who have not where withal to maintain their Rights.

**Champerty.** Champerty is where a Bargain is made with the Plaintiff or Defendant, in any Suit to have Part of the Thing sued for, if the Party that undertakes it, prevails therein ; this is an Offence punishable by Common Law as well as by many Statutes, particularly by the *Stat. 28. Ed. 1. c. 11.* which enacts, that no Officer nor any other shall take upon him any Business in any Suit to have Part of the Thing in Plea ; and it hath been adjudged, that if it had been agreed between the Counsellor and his Client before the Action brought, that he should have Part for his Wages, then it would be Champerty ; and it hath been always looked upon as dangerous as well as highly dishonourable for a Lawyer to meddle with any such Gift, since it carries with it the strongest Presumption of Champerty.

**Maintenance.** Maintenance is where a Person officiously meddles in a Suit depending in a Court, which no Way belongs to him, by assisting the Plaintiff or Defendant with Money or otherwise in the Prosecution or Defence of any such Suit.

The obvious Policy of the Law with regard to these Crimes, is to prevent vexatious Suits ; and unquestionably there cannot be a  
more

more noxious Creature in Society than a Stirrer up of Suits and Contentions, between Neighbours, Relations and Friends, or indeed between any Persons whatsoever.

This even in the meanest Pettyfogger is a shocking Crime ; how much more so in a Person of superior Rank in the Profession of the Law. And what still makes it the more grievous and intolerable, is, the secret Manner always practiced in the Commission— which renders it almost impossible to convict Persons of it, or to apply sufficient Proofs upon the Occasion ; the Scripture says, *Cursed is He who removeth his Neighbour's Land-mark*, but the Man who is perpetually moving the Land-marks of his Neighbours, is heaping up Curses indeed upon his own Head, as well as Vexation and Distress upon all Persons whose Properties are thus violated ; but there are some People like some Fishes, who cannot live but in muddy Water, who are ever groping in Dirt and Nastyness, like Kennel Sweepers, or Gold-finders ; and who, on the Prospect of a precarious Recompence are contented to pass their whole Days in the most filthy Occupation.

The best Remedy, I believe, that can be applied to this Evil, is the watchful Eye of our Judges, I mean with regard to the Practicers ; and this with the known Honour, and chaste Conduct of the greater Part of the Gentlemen of the Long Robe, cannot fail of effectually preserving the Bar from the Filth and Dirt of all Pettyfogging Genius's, who

The best Remedy against them.



who either are, or hereafter may become Members of a Science, that must be ever held in the highest Estimation, so long as Learning, Virtue, and a fair Investigation of Truth, are the distinguishing Qualities of its Professors.

What may be  
called a good  
Lawyer.

And here I shall beg Leave to draw a Portrait of what in my Apprehension may justly be denominated a good Lawyer, by which the opposite Character will appear without a particular Deliniation. And such a one must be a Man of Virtue and the strictest Probity, with an equitable Heart as well as a reasoning Head, that thinks nothing profitable that is not honest, who is perfectly conversant in the Municipal Laws of his own Country, as well as the universal Principles of natural Justice, who makes the Practice of the Law, a noble, a liberal Profession, not a groveling, mercenary Trade, who exerts all the generous Powers and Faculties of his Soul in the ever honoured Cause of Truth; but when he discovers the least intended Imposition, the least Fraud, Falshood, or Chicanery, detests the Notion; that it is his Duty to employ his Skill and his Eloquence in Defence of Wickedness, and to serve his Client, be he right or wrong. In Points of Nicety and Doubt, he will advance with Modesty and Candour, every Argument that his Learning and Knowledge suggest to him in favour of his Client; but he will not assert what he knows to be false, he will not mistake Facts—he will not (according to the

Law



Law Phrase) cook up his Pleadings with Scurrility, Scandal, Prolixity and Impertinence, he will not for his own lucrative Purposes, or to gratify his own Malice, or to force the adversary Party into an unreasonable Composition, be a Propagator of underhand Defamation, and insidious Calumny, or a Promoter of Discord, Hatred, and Animosity between Neighbours, Friends, and the nearest Relations; and he will in all his Practice keep clear of the shameful Crimes of Barretry, Champerty and Maintenance. He will not for the Sake of appearing with a large Bundle of Papers, and making an ostentatious Parade of great Business, or to feed his own Avarice, multiply his Pleadings with useless Charges and Invectives, which he knows must in the End be hurtful to his Client. He will endeavour rather to cool than inflame the Passions of the Parties, and he will never be averse to the recommending Peace upon reasonable and equitable Terms, as his Experience and Observation will convince him of the Fallibility of the ablest Men's Opinions in Matters of Doubt and Difficulty. In short, to be a good Lawyer, he must be, not only a Man of extensive Knowledge and deep Learning, but what is far more Essential, he must be a Man of Honour, of Truth, and of the strictest Virtue ; or rather, he must be born with  
a be-

a beneficent and humane Bosom\*. Such there is the greatest Reason to believe, most of

\* Upon this Principle (if it be well founded) no Man can make a good Lawyer, a good Divine, a good Physician, or indeed a good any Thing, who is not by Nature formed with Humanity, and a tender, social Heart: for though it is certain that Education will frequently soften the Imperfections of Human Nature, and sometimes in a Manner quite disguise them, yet we often see that the very best Education proves utterly ineffectual; which shews that bad Dispositions are inherent in some Natures, which nothing can conquer. The same Observation will hold in the Brute Creation; some are tractable, docile, and easily rendered quite gentle; whilst others are fierce, treacherous, and sometimes absolutely untameable. In like Manner, many of the Human Kind are from their Infancies fraught with Perverseness, Cunning, and the most shocking Profligacy, which no Time, no Precepts, no Pains, Care, or Industry, can get the better of. The most horrid Seeds of Corruption are born with some Men; and therefore I believe it would not be a meer Jest to say, that such as entertain a proper Regard for the Happiness and Honour of their own Families, as well as the Dignity of Human Nature, should avoid all union of Blood with such Sins of Nature, (if I may use the Expression) for a Man by Nature formed a Scoundrel, shou'd, (if it could be prevented) be no more suffered to propagate his Species, than a Leper, or a Person half consumed with the Venereal Disorder. I could name a few Families, where Health, Beauty, Good Nature, Honour, Truth, and Justice, are, and have been the predominant Qualities for several Centuries; where not a Drop of tainted Blood has been suffered to enter, where every Thing flowed from Benevolence, Generosity, and Social Affection, where all the Men were actuated by the most shining Magnanimity; and all the Women by Prudence, Sweetness of Manners, and the truest Nobility of Conduct. From such a Family, or from one who comes nearest to it, who that wished for an illustrious Posterity would not chuse a Partner?

of the Gentlemen now in the Profession really are, and such who are not so, will, it is to be hoped, not have it in their Power to do much Mischief, as they certainly will be treated, not only by their Brethren, but likewise by the Judges, with the Contempt and Abhorrence that they deserve.

The late Viscount *Bolingbroke* has indeed made very free with the Gentlemen of the long Robe. The Passage need only to be Quoted to shew the Injustice of it.

Lord Bolingbroke's Opinion of the Profession of the Law.

‘ I might Instance, says he, in other Professions the Obligation Men lye under of applying themselves to certain Parts of History ; and I can hardly forbear doing it in that of the Law, in its Nature the noblest and most beneficial to Mankind ; in its Abuse and Debasement, the most sordid and the most pernicious.’

So far we will agree with him.

‘ A Lawyer, continues he, is now nothing more, I speak of Ninety-nine in a Hundred ; to use some of *Tully's* Words, *Nisi leguleius quidam, cautus et acutus, præco actionum, cautor formularum, auceps Syllabarum.*’ But there have been Lawyers that were Orators, Philosophers, Historians. There have been *Bacon's* and *Clarendon's*. He might have added, *Somers's*, *Hardwick's*, and *Jocelyn's*.

There will be none such, continues he, any more, 'till in some better Age, true Ambition or the Love of Fame prevails over Avarice ; and 'till Men find Leisure and



and Encouragement to prepare themselves for the Exercise of this Profession, by climbing up to the Vantage Ground, (so my Lord *Bacon* calls it) of Science ; instead of groveling all their Lives below in a mean but gainful Application to all the little Arts of Chicane ; 'till this happens, the Profession of the Law will scarce deserve to be ranked among the Learned Professions ; and whenever it happens, one of the Vantage Grounds to which Men must climb is Metaphysical, and the other Historical Knowledge. They must pry into the secret Recesses of the Human Heart, and become well acquainted with the whole Moral World, that they may discover the Abstract Reason of all Laws ; and they must trace the Laws of particular States, especially of their own, from the first rough Sketches to the more perfect Draughts, from the first Causes or Occasions that produced them, through all the Effects good and bad that they produced.

A Defect in  
the Education  
of English  
Lawyers.

So far I will agree with this elegant, though severe Writer, that the greater Part of the Gentlemen of the Bar generally begin their Studies where they should end them : I mean, in the harsh Maxims of their own Laws, instead of the general Universal Maxims and Principles of Equity fitted to all Nations. And as they are for the most Part initiated too early into the Gainful or Practique Part, they seldom after have Leisure to make any deep Researches into either Philosophy or History ; but though this may  
and



and certainly often doth stifle many great Genius's, whose Talents are in a Manner imprisoned within the narrow Circle of Common Law Dogmas, and Cases in Equity Courts, as little Satisfactory, and often inconsistent with true Reason: Yet under all these Disadvantages, where is there a Profession that has produced more Orators, more Philosophers, and more great Men in almost every Branch of valuable Science? Perhaps it were to be wished, that so noble a Profession was not so much considered and intended by Parents for their Children, meerly to answer the End of a Trade, and to make a Livelyhood of; but that is an Abuse that is scarce to be prevented; and therefore neither the Profession nor the Professors, are answerable for it, so long as the Practicers govern themselves by the plain Rules of Truth, Honour and Morality.

The next Grievance in the Law, which calls most for the Consideration of wise and able Men, is the vast Expence attending Suits; which in a great Measure is to be imputed to the Exactions used in public Offices; 'tis true, the Fees are all ascertained and known, but what avails that Regulation, so long as the Parties may be consumed by Delays, founded on a thousand Pretences.

The great Expences of Suits to what chiefly to be imputed.

In Courts of Equity there is scarce a Cause in which an Account is not directed; but in Accounts of any great Length or Complication of Matters, it may be, and often is,

C

many

many Years, before a Report can be had; so that it often happens that the Party never can obtain the Benefit of a Decree made in his Favour. In the Court of ———, there is but one Officer to settle all Accounts; where in Fact there ought to be four or five. This Grievance, I apprehend, arises from a Defect in the original Constitution of the Court; which none can redress but the Legislative Power.

The next Thing I shall beg Leave to mention, may perhaps be thought of too high and delicate a Nature for a private Man to offer his Sentiments about; but the weakest Understanding may sometimes throw out a Hint that may be of Use to the most exalted Wisdom. I mean nothing but the Publick Good; and am therefore sure I shall not be censured by any candid Person for an Error of Judgment.

Our Equity  
uncertain.

The Decrees of our Courts of Equity are handed down to us in large Volumes of Reports, and are multiplying to so great a Degree, that if they continue to encrease in a like Proportion for half a Century more, we probably shall be in the same uncertainty and State of Doubt, with regard to knowing what is Equity, and what not. That the *Roman Empire* was in before the Publication of the Digest and the Institutes by *Justinian*. Every Body knows (and some to their great Detriment) that what was Equity twenty Years ago is now utterly exploded, as inconsistent

sistent with the Elements and Rules of all Justice. So fluctuating is the Reason of Mankind! And yet the Law Student by reading over these Cases is frequently misled; and therefore, when he comes to be a Practicer, will, on the Authority of them probably mislead others; besides many Men of the greatest Capacity, have often given Opinions on the Authority of Book Cases, that have been utterly repugnant to the Decisions of the ——— C ———, and that for want of having those Decisions in their Libraries; which are not to be got, but with Difficulty and a considerable Expence. I shall not presume to add any Thing further on this Head, any other than that the Opinions of our Lawyers must be extremely vague and uncertain, where they do not know with Precision the several Changes that from Time to Time are made in our Principles of Equity.

It is indeed said, that every Case in Equity is to stand upon its own Circumstances, and that Precedents are only of Use where the Circumstances exactly agree, which scarce ever happens. And possibly this may be a Reason why the Decisions of the ——— C ——— are not to be had as easily as other Law Matters, nor the Reasons upon which they are given ever printed with the ———s; and if so, the Argument will hold much stronger against the multiplying the heavy Volumes of Equity Cases that even at present



encumber the groaning Shelves of our Lawyers. And instead of such Collections (which the Executors of Judges, and eminent Advocates so constantly supply us with) I apprehend, (I speak it with the greatest Diffidence of myself as well as Deference to my Superiors) an Institute of Maxims or Principles of natural Justice and Reason to be an invariable Rule for our Courts of Equity, would be a proper Substitute in their Room. This would be a Work worthy of the wisest, the best, and the most learned Men in the three Nations; and would probably do themselves more Honour, and the Public more Service, than all the Equity Reports that ever were, or ever will be exhibited to the End of Time

An Institute of Equity should be formed.

Adapted to the British Government.

By this, I would not be understood to mean an entire System of *Roman* Equity, but an Institute to be taken both from that, and such Maxims of our own Laws as seem best to answer the Freedom and Spirit of an *English* Government. For though no one honours the *Roman* or Civil Law more than I do, yet as it was mostly calculated by arbitrary Monarchs to answer the Ends of their own Despotism, many of the Principles found in it could never be brought to coincide with the Nature of our Constitution; and in conformity with this, our Courts of Equity most justly adhere to the use of Juries, by directing Issues where the Conscience of the Court, as to Matters of Fact, wants to be informed. The like may be observed in many



many other Particulars, where the Maxims of our own Common Law are to be preferred; and are in reality more consonant to Reason and Equity, and founded on a more perfect Intelligence of Human Nature than are those of the Civil Law. What can be for Instance, more absurd than the giving the Guardianship of a Minor (which the Civil Law does) to the Person who is next to inherit the Estate. This the Common Law of *England* for the strongest Reason will not permit: And Lord *Coke* most aptly says, it is, *Committere ovem Lupo*. Numerous other Instances might be given where our own Law should be preferred; but a Comparison of this kind would for the present take up too much Time; and therefore, shall be reserved for the Work of another Day.

It is computed that in *Great-Britain*, the Money spent annually in Law, amounts at <sup>Money spent</sup> least to one seventh Part of the whole Ex-<sup>in Law.</sup>pences of Government; I mean in ordinary Years. How much the Money spent in the same Way in this Kingdom may amount to, I know of no Computation that has been yet made; but I should imagine that if the like Computation was here admitted, it would be rather under than over.

This it must be confessed is a most grievous Load on the Subject; however, as Controversies and Disputes relating to Property are the inevitable Consequences of Dealings amongst Mankind, and will be more or less  
numerous

numerous according to the Degree of Trade, Wealth, and People in any Community. All that the best Laws can do, is to distribute Justice to the People with as little Expence, and as much Expedition as the Nature of such Matters will admit of.

Courts Merchant.

Their Use.

Trade, then being the great Fountain of all the Wealth and Grandeur of these Nations, the very first Object of our Attention should be, to free our Merchants and Traders from tedious and expensive Litigations : I mean as to all commercial Contracts and Agreements. Every Hour that a Merchant loses, and every Shilling that he spends in Law (which is so much taken from his Capital) are irretrievable Injuries to the whole Community of which he is a Member ; therefore Courts Merchant should be established, to consist of the most eminent Men in Trade, who might decide in a summary Way all Disputes between Merchants and Traders relative to Matters of Commerce ; and who in all probability, would be more adequate to such Determinations than the most able Law Judges we have.

Fines and Recoveries should be laid aside.

For the same Reason that Trade may meet with all possible Protection, and our mercantile People be secured from Losses occasioned by the Negligence or Fraud of those they deal with, especially of Men of Landed Property ; and also to make the transferring of Real Estates easy and safe, (which must prove the strongest Encouragement to Commerce)

merce) as well as to free the Laws from a Jargon that is the highest Reproach to the Common Sense of these Nations: It must be submitted to the Wisdom of the Legislature, whether Fines and Recoveries should not be absolutely set aside, and a Deed executed by the Tenant in Tail in Possession, and duly registered, declaring the Fee of the Estate to be from that Time vested in himself, should not be substituted in the Place of the present intricate Method of cutting off Intails, and a Proviso that no such Deed shall be given in Evidence until all Fees payable at present to the Crown are satisfied and paid into some proper Office, to be appointed for the Receipt of the same, and a Certificate on the Back of the said Deed, to be indorsed for that Purpose by the Officer; indeed, if a Recompence was made to the Crown for this antient Jewel in some other Way, it would be still much the better. These Alterations would probably lessen some Part of the Profits of the Gentlemen of the Long Robe, but it is not to be imagined that a Consideration of so paltry a Nature could create a Moment's Hesitation in their Minds, (in the Minds of many, I would say) which they ought to prefer, the publick Good, or their own private Advantage.

The next Thing I shall mention, and which indeed highly merits the Attention of the Publick, is the immense Army of Attornies that we have amongst us, and who are every

And why?  
The Encrease of Attornies should be prevented.



A Remedy  
proposed.

every Day encreasing to a most alarming Degree: Every Body knows that all Trades may be overstocked, and that as few People chuse to starve, such as can't get honest Bread will probably not stick at unjust Methods to feed themselves and their Families; the shocking Consequences to Society arising from hence are too obvious to be here expatiated on, the civil Law Maxim is, that *Paupertas impulit ad Turpia*, and on the Authority of this Maxim I will venture to propose a Remedy, which is this, that after a certain Time, to be mentioned, no Person shall be sworn and admitted to practise as an Attorney who does not, before he is so admitted, swear himself to be worth at least 800l. And also give other full and sufficient Proofs of the same, to the Satisfaction of the Judges of the Court of which he is to be an Attorney.

This must of Course put a Stop to the immoderate Encrease of Attornies in this Kingdom, which has happened for some Years past, and is still likely to go on, and of Consequence must prove a Spur to all Sorts of honest Industry, as our Husbandmen, Tradesmen, and Farmers, instead of spending their Money, on every trifling Dispute, in expensive Litigations, will reserve their Fortunes for Purposes of a more useful Nature to the Publick, as well as to their own Families; now the Profession is found so Lucrative that there is scarce a Farmer or little Tradesman



Tradesman in the Kingdom, that does not breed up one of his Children to this Business, and the Consequence is, that if they cannot get honest Bread, they will and certainly do get not only Bread, but accumulate great Riches some how or other. If it is said that the above Regulation may reduce the Profession to too small a Number, I beg Leave to say, there is not the least Danger of that Inconvenience, since it is certain that two Hundred sensible honest Attornies would be able to conduct the Business, (at least the honest Business of this Kingdom) were it twice as much as what it really is at present, and as a Proof of this, the few Men of Skill and Character that conduct almost all the principal Business in the Four Courts, will be a convincing Argument; and from thence it may reasonably be asked, what becomes of all the rest? why, they settle in the Country, turn Land Jobbers, propagate Disputes, Strife, and Litigation, throughout the Neighbourhood; pick up by Fraud and Pettyfogging all the valuable Interests that are going; destroy all Industry; ruin our Tillage, and prevent our making any Advances towards that simple Kind of *English*-like Yeomanry, so much to be wished to be established amongst us. I could name several great Counties in *Ireland* where Half the Protestant Tenants in them have been bred Attornies.

The

The King of  
Prussia's Plan  
a noble one.

The King of *Prussia's* Plan for reforming the Administration of Justice in his own Dominions, is one of the noblest Works that ever entered into the Imagination of the wisest and greatest of Princes. It has effectually cut off all Manner of Querk, Chicanery, and Delay in the Prosecution of Suits. He was intent upon cultivating Industry, Trade, and Manufactures among his Subjects, and he knew, that those good Things could not be brought about, at least to any considerable Degree, while his People were consumed by expensive Litigations. Possibly the whole of this Plan could not with Propriety be adopted under our free Constitution; but thus much may be said with Certainty, that many Parts of it, may, and I shall here consider some few of them.

‘ It is enacted by the King, that the Advocates who shall defend a bad Cause, or be convicted of multiplying Proceedings uselessly, of protracting a Suit, of heaping up in the Writings Repetitions and Things foreign to the Subject, shall be condemned not only to forfeit their Fees to the Use of the Free Chest, but also to be punished arbitrarily according to the Exigence of the Case.

‘ It is easy to conceive (says the Writer) that this Regulation ties up the Hands of the Advocates, who have it no longer in their Power to protract Causes, to lead their Clients through every quibbling Detour,

' tour, and fleece them by exacting exorbi-  
 ' tant Fees. And as the Parties frequently  
 ' employed ignorant Attornies to draw their  
 ' Petitions, from whence it followed that  
 ' the Fact and State of the Cause were never  
 ' rightly laid down, and that most of the  
 ' Demands were contrary to Law, which  
 ' yet did not hinder some greedy Advocate  
 ' from putting his Name to the Bottom of  
 ' the Petition, provided only he were paid  
 ' for it.' This Part of the *Frederick* Code,  
 by punishing the Advocate, must put an  
 effectual Stop to the like Grievances for the  
 Future.

Such Practices (if any such should ever  
 prevail here) may most certainly be prevent-  
 ed by the Care and Vigilance of our J——s,  
 who have the Superintendancy of the Beha-  
 viour of all Persons employed in the Pro-  
 fession of the Law : And if an Action was  
 given to the injured Party, against the Law-  
 yer who multiplied Proceedings uselessly,  
 and heaped up in the Pleadings Repetitions  
 and Things foreign to the Subject, I ima-  
 gine the Spirit of Pettyfogging, and Vexa-  
 tion must in all future Times be effectually  
 banished from those to whom the Conduct  
 of Suits is committed.

' In order to leave no Room for Chicane,  
 ' the King directed that the numerous Or-  
 ' dinances, which were collected without  
 ' choice or order, and which were dispersed  
 ' in a Multitude of particular Regulations,  
 ' should



‘ should be ranged in a systematic Order, in  
 ‘ order to compose of them a new Body of  
 ‘ Laws, founded on Reason and the Con-  
 ‘ stitutions of the Country.’

This was accordingly done, and it were greatly to be wished that all civilized Nations, particularly our own, would follow so glorious an Example.

Another Part of the King’s Plan imports,  
 — ‘ That before Judgment be given, and  
 ‘ even from the Time of appointing the Par-  
 ‘ ties to be first heard, a Counsellor of the  
 ‘ College be charged to try to bring about  
 ‘ an amicable Accommodation between  
 ‘ them; and that even if he should not suc-  
 ‘ ceed, the Parties and their Advocates  
 ‘ shall be put off to a second Hearing, to  
 ‘ see if in this Interval they can make it  
 ‘ up.

‘ The King hath rightly judged, says the  
 ‘ Writer, that the Number of Law Suits  
 ‘ would be lessened one Half, if the Courts  
 ‘ of Justice would take the Trouble to en-  
 ‘ deavour to accommodate Matters between  
 ‘ the Parties before their Minds be soured  
 ‘ by tedious Suits, especially when the Ad-  
 ‘ vocates employed are Men of Probity, who  
 ‘ entering into the Views of the King their  
 ‘ Master, aim only to serve their Client,  
 ‘ and are so disinterested and honourable,  
 ‘ when a Cause appears to be Litigious, to  
 ‘ acquaint the Parties therewith.

‘ As



‘ As Experience shews, that at the Beginning of a Suit, the Parties are commonly inflexible, and refuse to listen to an Accommodation, the King hath thought fit, that after the Counsellor appointed for that End shall have tryed to reconcile the Parties, and laid before them and their Advocates both Sides of the Question, a Delay of some Days shall be given them to reflect coolly on what hath been represented to them, and to make it up between themselves.

‘ This Justice must be done (continues the Writer) to the Tribunals and Advocates of *Pomerania*, that they truly distinguish themselves above all others, by their Endeavours to reconcile the Parties and the Skill they employ for that Purpose.

‘ And in Part IIIId of the Code *Frederick*, the Measures the Judges are to take to bring about an Accommodation, and in what Manner the Advocates who succeed therein are to be recompensed, are particularly set forth.’

How far these Particulars may be adopted into our Plan of Practice, I leave to the Consideration of the Learned in our Laws; however, as they all seem to be founded on the most perfect Knowledge of human Nature, there is great Reason to think that much Good would be produced from them.

As Experience shews, that at the begin-  
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